

THE PRESIDENT: Delegate Powers.

DELEGATE POWERS: They refused to grant certiorari when that and a number of other questions were before it. I also recall that the Fourth Circuit in a sort of a left-handed way hinted that this question was unconstitutional and mentioned the fact that hopefully it would not be in the constitution after this Convention had completed its work.

THE PRESIDENT: Delegate Dorsey.

DELEGATE DORSEY: That might have been a personal wish but the Supreme Court did refuse to grant certiorari because in Maryland the jury was a judge of the law and the fact, is that not correct?

THE PRESIDENT: Delegate Powers.

DELEGATE POWERS: The effect of the Supreme Court failing to grant certiorari is certainly not to approve of the question involved. They refused to grant certiorari and then later granted it and reversed the lower courts many times.

THE PRESIDENT: Delegate Dorsey.

DELEGATE DORSEY: If the Supreme Court felt it was denial of due process, do you not feel they would have granted certiorari?

THE PRESIDENT: Delegate Powers.

DELEGATE POWERS: I think we all realize that the Supreme Court very often waits for the case which presents the issue in proper perspective before it grants certiorari so it may deal with it properly.

THE PRESIDENT: Delegate Dorsey.

DELEGATE DORSEY: For over 100 years it has been in existence in Maryland and the Supreme Court up to this date never declared it unconstitutional, is that correct?

THE PRESIDENT: Delegate Powers.

DELEGATE POWERS: The answer to that is correct. For over 100 years we did not furnish counsel to indigents and the Supreme Court has said we must.

THE PRESIDENT: Delegate E. Churchill Murray.

DELEGATE E. C. MURRAY: Mr. President and fellow delegates, in deference to those of you who have been so tolerant, I shall limit my statements to one minute instead of three. As a matter of fact, if my cause is just, one minute should suffice. This is the last opportunity you will

have to obtain this privilege for our segment of the English-speaking people to be judged by their peers and not solely by the letter of the law. It has been passed on from generation to generation for about 400 years. I beg you to join me in retaining it.

THE PRESIDENT: Delegate Henderson.

DELEGATE HENDERSON: Mr. Chairman, almost 100 years ago the United States Supreme Court in *Spark v. The United States* decided that this concept of the jury being the judge of the law was not permissible in the federal courts and if the Supreme Court, which at that time did not undertake to lay down criminal procedure for the states but has done so within the the last 30 years, follows its regular pattern, the first good chance it gets, it will require that the states follow the same procedure which they have prescribed in the federal courts. In almost every case, that has been the pattern that they have followed.

Now, Judge Sobeloff, to come to the immediate present, gave a strong hint that he thought this was a violation of due process and he left it up to this Convention to give this ancient provision a decent burial, realizing, no doubt, that if he struck it down as violating due process or equal protection of the laws, he would probably invalidate all the criminal convictions in this State since the year 1851 or at least he would require that all pending cases be retried.

But altogether aside from that, let us look squarely at the merits of this controversy. Why is it likely that the Supreme Court will declare it to be a violation of due process? Simply because it denies to an accused the right to have the law by which he is convicted reviewed in a higher court. That is the vice in the thing which is so apparent that I would think any layman would understand it. We have been at pains to create in the lowest level a fourth tier of courts manned by a judiciary who is trained in the law. Are we going to say now that judges should not instruct, could not advise the jury? Will we leave it to a body of laymen chosen at random to decide a man's fate and cut off the right to have a review because who knows what law the jury applies? If the judge instructs, that is spread on the record. When the jury finds the law, no one knows what law they are applying. I say to you that that denies the accused a fair right of appeal.

THE PRESIDENT: Delegate Dorsey.